

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LONG ISLAND OFFICE

-----X
ADRION WENTWORTH

Plaintiff,

-against-

ORDER

14-CV-4195 (SJF)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----X

FEUERSTEIN, J.

Plaintiff Adrion Wentworth ("plaintiff" or "claimant") commenced this 42 U.S.C. § 405(g) action seeking judicial review of the final determination of defendant Commissioner of Social Security Administration ("Commissioner") denying his application for disability benefits and Supplemental Security Income (SSI) benefits. The Commissioner now moves for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the following reasons, the Commissioner's motion is granted.

Plaintiff applied for disability and SSI benefits on June 22, 2005. [Docket No. 11 (Declaration of Patrick Herbst, Acting Chief, Court Case Preparation and Review Branch IV, Office of Disability Adjudication and Review, September 16, 2014 (Def.'s Decl.)). The Social Security Administration denied the application on September 12, 2005. *Id.* Following a hearing, on November 1, 2007, the Administrative Law Judge (ALJ) determined that plaintiff was not disabled. *Id.* On March 18, 2008, the Appeals Council affirmed, and mailed a copy of its decision. Def.'s Decl. The decision indicated that plaintiff had sixty (60) days from receipt of the decision to commence an action in this Court, and that he could request an extension of time for good cause. *Id.* Plaintiff filed this action on July 2, 2014. [Docket No. 1]. Defendant

moved for dismissal on November 6, 2011, arguing that plaintiff's action was untimely. [Docket No. 10].

The regulations promulgated under 42 U.S.C. § 405(g), require a plaintiff to commence an action within sixty (60) days of receiving the Appeals Council's decision, which is presumed to occur five (5) days after mailing. 20 C.F.R. § 416.1481; 20 C.F.R. § 422.210(c). When a plaintiff files an action more than sixty (60) days after receipt of the Appeal's Council's decision, the court should dismiss it. *E.g., Velez v. Apfel*, 229 F.3d 1136 (2d Cir. 2000). Here, plaintiff filed this action on July 2, 2014, more than (6) years after the Appeals Council's March 18, 2008 decision. Accordingly, the Commissioner's motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure is GRANTED.

SO ORDERED.

s/ Sandra J. Feuerstein
Sandra J. Feuerstein
United States District Judge

Dated: November 5, 2015
Central Islip, New York